

APPENDIX 6

WORK OF TRIBUNALS

The following summarises the work of the Australian Competition Tribunal, the Copyright Tribunal, the Defence Force Discipline Appeal Tribunal and the Federal Police Disciplinary Tribunal during the reporting year.

Australian Competition Tribunal

Functions and powers

The Australian Competition Tribunal was established under the Trade Practices Act to hear applications for the review of:

- determinations by the Australian Competition and Consumer Commission ('ACCC') in relation to the grant or revocation of authorisations which permit conduct or arrangements that would otherwise be prohibited under the Trade Practices Act for being anti-competitive;
- decisions by the Minister or the ACCC in relation to allowing third parties to have access to the services of essential facilities of national significance, such as electricity grids or gas pipelines; and
- determinations by the ACCC in relation to notices issued under section 93 of the Trade Practices Act in relation to exclusive dealing.

A review by the Tribunal is a re-hearing or a re-consideration of a matter, and it may perform all the functions and exercise all the powers of the original decision-maker for the purposes of the review. It can affirm, set aside or vary the decision under review.

The Minister may also refer issues concerning certain practices by ocean cargo carriers to the Tribunal for inquiry and report.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is subject to the Trade Practices Act and regulations within the discretion of the Tribunal. The *Trade Practices Regulations 1974* sets out some procedural requirements in relation to the making and hearing of review applications.

Proceedings are conducted with as little formality and technicality and with as much expedition as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as appointed by the Governor-General.

During the reporting year, Justice Goldberg's appointment as President was made full-time on 23 March 2005. Justice Cooper ceased to be a Deputy President on 14 March 2005. Justice French and Justice Finkelstein J were appointed Deputy Presidents on 22 April 2005. Mr BF Keane was appointed a member on 5 August 2004. Dr WJ Beerworth and Prof C Walsh were appointed members on 16 December 2004.

The Registrar and Deputy Registrars of the Tribunal are all officers of the Federal Court. Their details are set out in Appendix 3 on page 100.

Activities

Five review proceedings were current at the start of the reporting year. During the year, three proceedings were commenced and four matters were finalised. Four matters are pending.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Decisions of Interest

Seven Network Limited (No 4) [2004] ACompT 11 (23 December 2004)
Seven Network Limited [2004] ACompT 10 (23 December 2004)
Qantas Airways Limited (with Summary dated 16 May 2005) [2004] ACompT 9

Workload Trends

The number of new matters was half the 10 year average of 5.9. The number of hearings (6) was above the 10 year average of 3.6 reflecting the high number of new matters filed in 2003-04. The number of hearing days (excluding directions hearings) (26) was substantially above the 10 year average of 16, again reflecting the high number of new matters filed in 2003-04.

Legislation now before Parliament confers new functions on the Tribunal to directly decide merger authorisations and to review ACCC decisions on merger clearances and collective bargaining notices. If passed, there will likely be an increase in workload from 2005-06 onwards.

Copyright Tribunal

Functions and powers

The Copyright Tribunal was established under the *Copyright Act 1968* to hear applications dealing with four main types of matters:

- to determine the amounts of equitable remuneration payable under statutory licensing schemes;

- to determine a wide range of ancillary issues with respect to the operation of statutory licensing schemes, such as the determination of sampling systems;
- to declare that the applicant (a company limited by guarantee) be a collecting society in relation to copying for the services of the Commonwealth or a State; and
- to determine a wide range of issues in relation to the statutory licensing scheme in favor of government.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. Subject to the Copyright Act and regulations, the procedure of the Tribunal is within the discretion of the Tribunal. The *Copyright Tribunal (Procedure) Regulations 1969* sets out procedural requirements for the making and hearing of applications.

Proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General. There were no changes to the membership during 2004-05.

The Secretary of the Tribunal is an officer of the Federal Court. Details of the Secretary are set out in Appendix 3 on page 100.

Activities

Seven matters were current at the start of the reporting year. During the year, two matters were commenced, and no matters were finalised. Nine matters are pending.

There was a full Tribunal hearing for four weeks in the Audio Visual Copyright Society matter CT 3/2002. Otherwise workload was normal.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Defence Force Discipline Appeal Tribunal

Functions and powers

The Defence Force Discipline Appeal Tribunal was established under the *Defence Force Discipline Appeals Act 1974* to hear and determine appeals by persons who have been:

- convicted of a service offence, or
- who have been acquitted of a service offence on the ground of unsoundness of mind (“a prescribed acquittal”)

by a court martial or a Defence Force Magistrate under the *Defence Force Discipline Act 1982*.

The Tribunal may dismiss or allow the appeal, substitute for a conviction a prescribed acquittal, or, if satisfied the appellant was unfit to stand trial, quash the conviction or prescribed acquittal and direct that the appellant be kept in strict custody until the pleasure of the Governor-General is known.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is within its discretion.

Membership and staff

The Tribunal consists of a President, a Deputy President and such other members as are appointed by the Governor-General. During the reporting year, the President of the Tribunal was Justice Heerey.

The Registrar and Deputy Registrars of the Tribunal are officers of the Federal Court. Their details are set out in Appendix 3 on page 100. On 28 April 2005, Jamie Wood, replaced John Mathieson as the Registrar.

Activities

One proceeding was current at the start of the reporting year, which was finalised during the year. No proceedings were commenced.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Federal Police Disciplinary Tribunal

Functions and powers

The Federal Police Disciplinary Tribunal was established under the *Complaints (Australian Federal Police) Act 1981* to deal with disciplinary offences under the Australian Federal Police (Discipline) Regulations. In addition, the responsible Minister may refer to the Tribunal for inquiry and report a matter relating to the Australian Federal Police.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. Proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General.

The Registrar and Deputy Registrars of the Tribunal are all officers of the Federal Court. Their details are set out in Appendix 3 on page 100.

Activities

No disciplinary proceedings were current at the start of the reporting year. During the year, no proceedings were commenced. Nor were any matters referred by the Minister for inquiry and report.

No complaints were made to the Tribunal about its operations during the reporting year.